CF0000061552

(2)

XII-188/(Jail)
C.J.P.R.—5,000-9-81

Division Bench (Criminal)

APPEAL OF PRISONER

No. 20 Name मनका राम

Father's name कहरू राम

Residence ग्राम-जलजली (कुसमी) Age 25 वर्ष

Sentenced to आजीवन कारावास on सत्रम अपर का न्यायाधीश

Under section 302 भादवि by अम्बिकापुर

it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the case for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement

2 Date of which copy received 21-4-97

3 Date on which Appeal sent

4 Whether the prisoner wishes to be represented or not -- Yes/No.

No. 20 Name मनका राम व/० कहरू राम

Continued in 21-4-97 Jail जिला जेल अम्बिकापुर

No. 1190 dated 25/4/97

Forwarded to the CHIEF JUDICIAL MAGISTRATE Ambikapur

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

संलग्न निर्णय प्रति 3 पन्नों में

अधीक्षक
Superintendent-Central/Dist./Sub-Jail
जिला जेल अम्बिकापुर (सरगुजा)

Date of receipt in C. J. M.'S Office 4-6-97

Date of receipt of record to accompany 4-6-97

Memo of Appeal of the Appeliate Court. High Court M.P. Jabalpur

No. 2 Dated 5-6-1997

Forwarded to the High Court of M.P. Jabalpur

C.J.Magistrate 5/6/97
मुख्य न्यायिक मजिस्ट्रेट
अम्बिकापुर, जिला सरगुजा (म०प्र०)

Date of receipt in Appliate Court

(P.T.O.)

(18)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr.A No. 1207/97 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B. : Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

28-2-2007

Ku. Sangeeta Mishra, Advocate for the appellant.

Shri M.P.S. Bhatia, Panel Lawyer for the respondent/State.

Arguments heard.

Oral judgment dictated on *Dais*.

ORAL JUDGMENT

Per Dhirendra Mishra, J. :

This appeal is directed against the judgment of conviction and order of sentence dated 21.4.1997 passed by 1st Additional Sessions Judge, Ambikapur, District Sarguja in S.T. No. 337/96, whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for offence under Section 302 of the Indian Penal Code for causing death of Ratu Ran, sentenced him to undergo imprisonment for life.

2. Briefly stated the prosecution case is that on 6-7-1996, Raturam (since deceased) had gone to his in-laws house at village Jaigali. He gave some money to the accused. He went to the accused for demanding his money. There some dispute arose between them in connection with money transaction, as a result of which, accused-appellant Nankaram assaulted Raturam by Lathi, on account of which he died. Information was received by Mangru (P.W. 6) - brother of the deceased on 9-7-1996, and after receiving information, he lodged report Ex. P-12. Investigating officer Anand Ram (P.W. 7) left for the scene of occurrence and after giving notice to the panchas, inquest over the dead body was performed vide Ex. P-2 in presence of the witnesses. Spot may was prepared vide Ex. P-3 by the Investigating Officer. The dead body was sent for autopsy vide Ex. P-

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मामला क्रमांक Cr.A.No. 1207/97 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

10 to Primary Health Centre, Kusmi, where P.W. 5 Dr. T. Sai conducted post mortem over the dead body and prepared post mortem report vide Ex. P-11. On the memorandum Ex. P-4 of the accused-appellant, one blood stained Lathi was taken into possession under Ex. P-5 and one blood stained terricot shirt was taken into possession under Ex. P-6. Plain soil and blood stained soil was taken into possession from the place of occurrence under Ex. P-7. After completing investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur who in turn committed the case to the Sessions Judge, Ambikapur, from where learned Additional Sessions Judge, Ambikapur received the case on transfer for trial. Charge under Section 302 of I.P.C. was framed against the appellant.

3. Prosecution in order to establish the charge against the accused-appellant examined 7 witnesses, thereafter statement of accused-appellant was recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication.

4. Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused-appellant as mentioned above.

5. Homicidal death of the deceased Raturam is not disputed. Even otherwise on the statement of P.W. 5 Dr. T. Sai who conducted post mortem and submitted his report Ex. P-11 and found the following injuries-

i. Lacerated injury on frontal region of scalp size 4/2 cm irregular in shape brown black in colour.

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मामला क्रमांक Cr. A. No. 1207/97 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

ii. Bruise on left lateral side of thorax size 5x2 cm irregular in shape brown black in colour

iii. Bruise on 2 cm back to the 2nd injury, size 3x2 cm, irregular in shape, brown black in colour.

and further opined that the cause of death was coma due to injury over the head and syncope and rupture of spleen, the homicidal death of the deceased is established.

6. There is no eye-witness to the incident and the conviction is based on circumstantial evidence.

7. Learned counsel for the accused-appellant submits that the appellant has been convicted solely on the basis of the circumstances that the body of the deceased was found on the verandah of the appellant, and that the weapon of offence Lathi which was recovered at the instance of the appellant contained blood stains and further that shirt seized from the accused also contained blood as per F.S.L. report (Ex. P-14). She further submits that there is no evidence to the effect that on the date of incident the appellant was present in his house or that the appellant alone resides in the house in question. She also submits that though the prosecution has come up with a story of motive that the incident occurred because the deceased demanded the money back which he had advanced to the accused-appellant, however, this fact has not been established during trial and P.W. 6 Mangru- brother of the deceased has not stated a word about the same. She further submits that the witnesses of memorandum and recovery in pursuance of the memorandum have turned hostile and the origin of the blood has not been ascertained and, therefore, the appellant

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मामला क्रमांक Cr.A.No.1207/97 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

could not be connected with the crime in question only on the basis of recovery at the instance of the accused-appellant.

8. On the other hand, learned counsel for the State supports the impugned judgment.

9. We have heard the learned counsel for the parties and perused the impugned judgment as also the material available on record. P.W. 6 Mangru-brother of the deceased has lodged the F.I.R. of Ex. P-12. This witness has stated in his deposition that Raturam is his younger brother. Raturam had gone to his in-laws place at village Jaljali. A person from village Jaljali came and informed that Raturam is dead, whereupon he went to Jaljali and saw that his brother was lying dead in the house of the accused-appellant. There was injury over his head and ribs. Brother-in-law of Raturam had told him that accused as killed whereupon he had lodged the report of Ex. P-12. In cross-examination, this witness has stated that brother-in-law of Raturam informed that Raturam had died because of some disease. However, after reaching there, he learnt that it was a murder. On further cross-examination, this witness has stated that the brother-in-law of Raturam had informed that Nanka had killed Raturam and this fact was told to him by some person of village Jaljali.

10. So far as first circumstance relied upon by the learned trial Court for convicting the appellant that the body of the deceased was found in the house of the appellant, is concerned, from the spot map, it is evident that dead body was found on an open verandah. None of the witnesses have stated that on the date of incident, the accused-appellant was present in his house or that the accused-appellant alone resides in his house.

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मामला क्रमांक Cr.A.No.1207/97 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Therefore, this circumstance cannot be taken to be a circumstance to prove the guilt of the accused-appellant and to connect him with the crime.

11. So far as the second circumstance i.e. recovery of the blood stained club and seizure of blood stained shirt on the memorandum of the accused-appellant is concerned, the witnesses of memorandum and seizure namely P.W. 1 Shivprasad and P.W. 2 Shivbalak have not supported the prosecution case and they have turned hostile, more so, except the report of F.S.L. that the club and shirt contained blood stains, there is no evidence that the same were human blood and more so of the same group of that of the deceased, therefore, the learned Court below was not justified in convicting the accused-appellant solely on these circumstances i.e. recovery of the blood stained club and seizure of blood stained shirt from the custody of the appellant. The prosecution has also not been able to establish the motive for commission of the crime, therefore, we are of the considered opinion that the prosecution has utterly failed to establish the charge against the accused-appellant on the basis of circumstantial evidence as the circumstances are not proved to connect the accused-appellant with the crime in question.

12. In the circumstances, the appeal preferred by the appellant deserves to be and is allowed. Conviction and sentence imposed upon the appellant are set aside and he is acquitted of the charge under Section 302 of I.P.C.

13. It is stated that the appellant is in detention since 11-7-96. He be set at liberty forthwith if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

patel